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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSEPH W. ANDERSON,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:12-cv-06573-JST

**DEFENDANT GOOGLE INC.'S
REPLY IN SUPPORT OF ITS
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Date: Thursday, June 20, 2013
Time: 2:00 p.m.
Place: Courtroom 9
Judge: Honorable Jon S. Tigar

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1 extent Plaintiff now claims that Google infringed his website design, he does not explain what
2 aspect of the website Google allegedly infringed or how. Nor does he provide evidence that he
3 sought to register the website design prior to filing the lawsuit, as required under the Copyright
4 Act. *See* 17 U.S.C. § 411(a) (“[N]o civil action for infringement of the copyright in any United
5 States work shall be instituted until preregistration or registration of the copyright claim has been
6 made in accordance with this title.”).²

7 Plaintiff attaches several exhibits to his Opposition and belatedly purports to explain
8 “Copyright of a Website Facts” (Opp. at 2-3), but the exhibits and many of the “facts” were not
9 included in the FAC. *Id.* at 3-5, 6-21. Plaintiff cannot constructively amend his complaint
10 through his opposition. *See Broam v. Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003). But even
11 if he could, the new “allegations” are as impenetrable as those in the FAC. Even if the exhibits
12 attached to the Opposition had been incorporated into the complaint, the exhibits and Plaintiff’s
13 summaries of them (Opp. at 3-5) only add to the uncertainty of his claims:

- 14 • Plaintiff attaches an exhibit allegedly containing “Google Inc. Advertising
15 Program Terms” dated August 22, 2006. Opp. at 6-8. Plaintiff alleges that these
16 terms were in place at the time he “hired” Google (*id.* at 3), but he does not
17 explain how the terms have any bearing on his claims, what he supposedly
18 “hired” Google to do, or what Google allegedly did wrong.
- 19 • Another exhibit contains a listing of what Plaintiff purports to be payments for a
20 Yahoo! Merchant Solutions account (*id.* at 4, 18-22), which he calls “proof [he]
21 was trying to continue e[-]commer[.]ce business” during the time period of
22 Google’s alleged violations (*id.* at 4), but again, there is no indication of how this

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24 (...continued from previous page)
25 attached to his original complaint, showing that trademark rights to “The House of Figure
26 Sculptures.com” are held by an individual named “Brian Carter,” not by Plaintiff. (Docket No. 1
at 7 of 53).

27 ² The single copyright registration provided by Plaintiff, attached to his original complaint,
28 does not demonstrate registration of a website as it is expressly for “print material.” (Docket No.
1 at 5 of 53).

1 exhibit or the fact that he was purportedly trying to conduct e-commerce are
2 relevant to his claims.

- 3 • Plaintiff devotes considerable space in his Opposition to “meta tag analysis” and
4 provides exhibits on the topic (*id.* at 3-4), but these appear at most to show that
5 when the phrase “the house of figurine sculptures” (which Plaintiff alleges is the
6 title of a copyrighted work) is entered into Google’s search engine, that phrase
7 comes up in the title of the subsequent search results page. *Id.* at 3, 10.
- 8 • There is no mention in the Opposition of any trade secret claim. Google’s
9 arguments with respect to that apparent cause of action should be deemed
10 unopposed.

11 In short, Plaintiff’s Opposition does not respond meaningfully to Google’s arguments for
12 dismissal, appears to abandon the FAC’s trade secret claim, and fails to show that the FAC states
13 a claim for copyright infringement (or any other cause of action) sufficiently to enable Google to
14 comprehend and defend against his allegations. Accordingly, Google’s motion should be
15 granted, and the FAC should be dismissed with prejudice.

16 **CONCLUSION**

17 Google appreciates that *pro se* litigants should be given greater leeway than represented
18 parties. However, Google should not be forced to defend itself against unintelligible pleadings
19 that fail to inform Google why it is being sued and how best to respond, and which prevent the
20 Court from evaluating Plaintiff’s claims. This Court gave Plaintiff very clear instructions in its
21 March 27, 2013 Order. Plaintiff did not follow those instructions, and apparently did not seek
22 outside assistance to help him do so. Accordingly, Google respectfully requests that Plaintiff’s
23 First Amended Complaint be dismissed without leave to amend.

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